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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ARB.P. 182/2018**

NINANIYA ESTATES LIMITED

..... Petitioner

Through: Ms Ranjana Roy Gawai, Mr Krishna
Keshav and Mr Vivek, Advocates.

versus

APARAJITA ENGICON PVT. LTD

..... Respondent

Through: Mr Shyam Moorjani and Mr A.P.
Dhamija, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **06.04.2018**

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act') seeking appointment of an arbitrator to adjudicate the disputes that have arisen between the parties in relation to an agreement dated 15.05.2013 (the Agreement).
2. The Agreement includes an arbitration clause, which reads as under:-

"16. That in the event of any dispute arising between the parties in respect of their duties, rights and obligations under or arising out of this Agreement, such disputes shall be resolved by arbitration to be held in accordance with the Indian Arbitration Act."
3. In view of the disputes that had arisen between the parties, the respondent issued a notice dated 16.10.2017 invoking the arbitration clause. The respondent also proceeded to unilaterally appoint an arbitrator.

Paragraph 45 of the said notice reads as under:-

“45. That in case, the amount of the payment is not received by us from you, M/s. Ninaniya Estates Ltd., as indicated above, it would be presumed that you are not interested to make the payment. Therefore, we, M/s. Aparajita Engicon Pvt. Ltd., hereby appoint Dr R.R. Mishra, (Retd. Judge) C - 3/413, Milan Vihar, 72- I.P. Exten. Patpargunj, Delhi - 92, to act as the Sole Arbitrator, to decide the disputes between the parties in the present matter.”

4. The petitioner responded to the said notice by letter dated 22.11.2017 countering the allegations made in the notice and further expressly stating that the respondent was not agreeable for appointment of Dr R.R. Mishra as an arbitrator. The respondent further stated that the petitioner would suggest three or four arbitrators for approval of any one of them. Thereafter, the petitioner sent another letter dated 02.01.2018, *inter alia*, stating as under:

“2. In furtherance of our reply dated 22.11.2017 and 27.11.2017, we hereby appoint Mr. Sundaram Balasubramanian (Ex-Chairman, Company Law Board) having residence at, E-103, Raheja Atlantis, Gurgaon-122002 as our nominee arbitrator for the purpose of adjudication of the disputes arising out of agreement dated 15.05.2013. You are requested to give your consent for the appointment of the above named person as the sole arbitrator at the earliest so as to expedite the further proceedings.”

5. It is clear from the above that both the parties are desirous to refer the disputes to arbitration and there is no controversy that an arbitration agreement exists between the parties. It is also apparent from the plain reading of the arbitration clause that there is no procedure agreed between the parties for appointment of an arbitrator. However, both the parties have

sought to appoint an arbitrator, which is clearly not acceptable to either party. It is also clear that none of the parties have the authority to unilaterally appoint an arbitrator. It is, thus, also apparent that none of the arbitrators named by either party have any jurisdiction to enter an award in respect of the controversy between the parties.

6. In view of the aforesaid facts, this Court considers it apposite to allow the present petition.

7. Accordingly, Ms Indermeet Kaur (Retd.), a former Judge of the Delhi High Court (Phone No. 23382128) is appointed as the sole arbitrator to adjudicate the disputes between the parties, which fall within the scope of the arbitration clause in the Agreement. This is subject to the arbitrator making the necessary disclosure under Section 12 of the Act and not being ineligible under Section 12(5) of the Act. The arbitrator shall fix the arbitral fees in consultation with the learned counsel for the parties and having regard to Schedule IV of the Act. If any counter claim is filed, the fees for the same shall be fixed separately.

8. The parties are at liberty to approach the arbitrator for further proceedings.

9. The petition is disposed of in the above terms.

VIBHU BAKHRU, J

APRIL 06, 2018/RK